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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

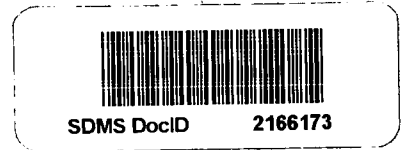
PFE ORIGINAL

SUBJECT: Malvern TCE Site/VRS Challenge of Armstrong World Industries, Inc.

DATE: 11/18/97

FROM: Joan A. Johnson

TO: Malvern File



1. 9/3/97 VRS ranking of Armstrong

Drums all years: 575
Drums up to 8/1/75: 0

Percentage all years: 1.8643%
Percentage up to 8/1/75: 0

2. Challenge dated October 6, 1997

EPA attributed 575 drums of waste to Armstrong. Armstrong claims that the actual number of drums attributable to Armstrong should be reduced to 312.14.

A. Harm should be apportioned using August 1, 1975 as the dividing line.

Armstrong contends that remedial costs at the Site may be apportioned between the two distinct areas of contamination at the Site, consistent with the model set forth under the Restatement (Second) of Torts and Superfund divisibility cases.

EPA has determined that remedial costs may be apportioned between the Former Disposal Area and the Main Plant Area. Such apportionment may occur for purposes of determining de minimis settlement offers. PRPs may further apportion liability as between themselves.

B. 50-Gallon drums

Armstrong contends that the drums from Armstrong to Chemclene were not full, but rather each drum contained 50 gallons of material. Thus, according to Armstrong, its volume should be reduced from 575 to 522.73.

It appears from the Armstrong transaction records that Armstrong's challenge in

this regard is correct.

C. Non-solvent materials

Armstrong contends that the number of drums attribute to Armstrong should be further reduced to 312.14 because the drums shipped to Chemclene contained significant volumes of non-solvent materials. Specifically, Armstrong claims that Chemclene's Reclamation Reports that are tied to each transaction specify the percentage of solvent reclaimed in each shipment. Thus, according to Armstrong, it is possible to calculate the volume of material other than solvent that was contained in any shipment of drums from Armstrong to the Site. This non-solvent volume should be subtracted from the total gallons of materials shipped in a particular batch.

In preparing the VRS, EPA has counted for each PRP all waste, including mixed waste, into the Site. EPA has presumed that contamination at the Site resulted from storage and/or processing of waste that included hazardous substances, into the Site. No discount has been provided by EPA based upon reclaimed solvents. Likewise, EPA has not attempted to subtract from the VRS non-solvent waste that was mixed in with hazardous substances shipped to the Site. Insufficient information is available to permit EPA to discount with any consistency among Site PRPs volume on this basis.

D. Owner/operator/transported liability and orphan share

Armstrong contends that EPA should state clearly that any liability to be derived from the VRS, or any future revised ranking, is secondary to the liability of Chemclene.

Typically, owner/operators are not among entities ranked in VRS. EPA, however, views Chemclene as a Site PRP that ought to participate substantially in Site remediation.

Armstrong contends that usage of the Site during the period from 1952 to 1968 should be determined and treated by EPA as an orphan share.

Any attempt to calculate an orphan share based upon the 1952 to 1968 time period would be highly speculative. It is reasonable to assume that a number of financially viable PRPs that utilized Chemclene post-1968, also utilized that Site during the 1952 to 1968. Under such circumstances, calculation of an orphan share may be inappropriate.

3. Recommendation

It is recommended that the VRS ranking for Armstrong reduced from 575 drums to 522.73 drums, based upon information indicating that Armstrong sent 50-gallon/drums to the Site.